LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S
FILED
NOV 29 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 647

NEAL CLARK,
Petitioner,

vs.

WASHINGTON STATE BAR ASSOCIATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

NEAL CLARK,
Petitioner
Box 37,
Hadlock, Washington

INDEX

Introductory Statement	1
Opinions Below	1
Jurisdiction	2
Questions Presented for Review	3
Constitutional and Statutory Provisions Involved	9
Statement of the Facts	9
Ruling on Constitutional Questions Below	13
Argument for Allowance of Writ	13
I. Testimony of Ruth Meacham improperly denied because Count III of complaint herein, findings and recommendations were predicated upon her written statement	15
II. The Association's transmittal of the groundless charge III contravened the prohibition of Washington Court Rule VIII (d) contrary to due process and equal protection	15
III. The right that groundless charges remain confidential under Rule VIII (d) abrogated by transmittal and consideration by Supreme Court	16
IV. Petition to offer evidence of petitioner's witness on good faith improperly denied	17
V. The incorporation by the Association into its Finding No. 15 of a prior oral decision, in a civil action which was influenced by anger was prejudicial hearsay	17
VI. Findings 21 and 22 and Conclusions I and II of Committee, and adopted by the Reviewing Board were not charged in the Complaint nor in issue	18
VII. The Association and the Court adopted two mutually inconsistent and incompatible bases of disbarment	18

VIII. The Association and the Court eliminated the equitable and statutory right to payment and to claim payment for reasonable value of services, and as condition precedent to finding intent to defraud, where disbarment was based on intent alone 19

IX. Association's Trial Committee and Board of Governors were prejudiced, and impartiality did not exist 19

X. Permanent disbarment upon the facts herein is cruel and unusual punishment, and unreasonable contrary to due process 21

Conclusion 22

APPENDIX:

1. Decision by Court Below 1a
2. Washington Statute 2.44.040 ..... 11a
3. Rule VIII (d) (Rules for Discipline of Attorneys, January 2, 1961) 11a
4. Canons of Professional Ethics No. 10 and 11 ..... 11a, 12a
5. Petitioner's Testimony to Hear Evidence 12a
5a. Testimony from Statement of Facts of Superior Court 13a
6. Rule IA Professional Ethics 13a
7. Petitioner's Testimony of Value of Services 14a
8. Petition to Offer Further Evidence and for Hearing Before the Board 15a
9. Agreement Between Della Harper and Fred W. Schmidt 17a
10. Judgment, Prior Civil Action 19a
11. Ruth Meacham Statement 21a

Tables of Rules, Cases and Statutes Cited

Rules and Statutes

Rule VIII (d): Washington Court Rule, Discipline of Attorneys.

R.C.W. 2.44.040, Washington Statute, Substitution and Payment of Attorney.

Canons of Professional Ethics 10 and 11.

United States Supreme Court Cases

Haynes vs. Washington, 373 U. S. No. 2-503, (May 27, 1963).

Mapp vs. Ohio, 81 Supreme Court, 1684, 367 N 5643.

Schware vs. Board of Bar Examiners, 353 U. S. 232.

Willner vs. Committee on Character and Fitness, Apellate Division of Supreme Court of New York, First Judicial Department, 373 U. S. 96, (May 13, 1963). (No. 2.)

Washington Supreme Court Cases

Boyer vs. Paine, 60 Wash. 56, 110 P. 682.

In re Caughlan, Vol. 161, No. 11, Washington Decisions, page 555.

In re Clark, Vol. 161, No. 11, Washington Decisions, page 546.

In re Metzenbaum, Wash. 2nd 75, 154 P2d 602.

In re Simmons, 59 Wash. 2nd 689, 369 P. 2nd 947.

In re Stafford, 36 Wash. 2d 108, 216 P 2d 746.

Wallace vs. Town, 8 Wash. 244, 35 P 1080.

Constitutional Provisions Cited

Washington State Constitution, Article 1, Section 14. (Excessive bail, fines and punishments.—Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.)

United States Constitution Amendments

Article IV. Unreasonable searches prohibited. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, ...

Article VIII. Excessive bail, fines and punishments. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article XIV. Citizenship—Equality of rights. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No.

NEAL CLARK,

Petitioner,

vs.

WASHINGTON STATE BAR ASSOCIATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

To the Honorable Chief Justice of the United States Supreme Court and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I

Introductory Statement

A. The Supreme Court of the State of Washington, in a five to three decision on February 28, 1963, permanently revoked the license of this petitioner granted February 17, 1939, to practice law. The same is reported in **Volume 161, No. 11, Washington Decisions, page 546, "In re Clark," see Appendix No. 1.**

The acts of petitioner, upon which the judgment of disbarment was predicated, consisted of the continua-

tion by him of a maintenance agreement, in favor of one Della J. Harper, upon the decease of her caretaker November 7, 1957 and until her decease, July 22, 1959. Petitioner received no compensation, there was no conversion, full accountings were made, and on April 1, 1960 in a prior civil action the contract assumed by him was declared null and void and of no force or effect. **(Ass'n Ex. No. 63, Appendix No. 10.)** In a separate transaction, petitioner had advised a Mrs. Ruth Meacham, and a Mr. Nathan Baird, against an immoral course of conduct existing between them. A civil action through another attorney, one George O'Dea, was commenced on behalf of Mrs. Meacham, and against Mr. Baird, but abandoned, upon the decease of her attorney.

In March, 1961, on the basis of the foregoing acts, the Association filed a complaint herein alleging in Count I that petitioner had overreached, taken advantage of Della J. Harper, and Count II that petitioner had defrauded the State of Washington in obtaining welfare assistance in her support, and Count III that petitioner had conspired with Ruth Meacham and her attorney, George O'Dea, in commencing a false suit or proceeding.

Petitioner had never previously been charged by the Association for any matter, and has never been charged with any crime.

B. Grounds on Which Jurisdiction Is Invoked

1. Petition for Rehearing was denied July 11, 1963, entered July 12, 1963, and on September 30, 1963, an extension of time to December 8, 1963 was granted by the United States Supreme Court within which to petition for certiorari.

2. The statutory provisions believed to confer on this court jurisdiction to review the above judgment by writ of certiorari are Articles IV, VIII, and XIV, Amendments to the United States Constitution, as implemented by statute and court rule, for the review of

State action contrary to the provisions thereof. The facts herein are identical, and the denial of due process the same as in the recent case of **"Willner vs. Committee on Character and Fitness Appellate Division of the Superior Court of New York First Judicial Dept. (May 13, 1963) 373 U. S. 96".**

The court has decided a federal question in a way in conflict with applicable decisions of this court; and has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

C. The Questions Presented for Review

I.

Testimony of Ruth Meacham improperly denied because complaint herein, findings and recommendations were predicated upon her written statement.

The proceedings and decisions were contrary to due process as established in the Willner case (supra) and in **"Schware vs. Board of Bar Examiners" 353 U. S. 232,** cited therein, and also the Washington case, **"In re Metzenbaum" 22 Wash. 2nd 37, 154 P. 2nd 602.** Half of the 793 page statement of facts and one-third of the Findings, Conclusions and Recommendations of permanent disbarment by the trial committee were predicated upon the written statement of witness Ruth Meacham, and denominated Count III **(Appendix No. 11).** The committee refused petitioner's request to obtain her testimony. **(Vol. II, St. of F. page 245-6 and Vol. IV St. of F. page 697-8), (Appendix No. 5),** and the reviewing Board of Governors denied the written petition and offer of proof, **(Appendix No. 8),** and instead adopted its Finding of Fact No. 28 as follows:

> "efforts to locate Ruth A. Meacham to obtain her testimony for the Panel hearing were fruitless,

and it developed during the hearing that she is now living in Bakersfield, California."

and transmitted the same to the Supreme Court.

II.

The Association's transmittal of the groundless charge III contravened the prohibition of Washington Court Rule VIII (d) contrary to due process and equal protection.

The evidence exonerated petitioner of Count III, and the reviewing Board of Governors did not adopt the Findings, Conclusions and Recommendations of disbarment therein, but nevertheless transmitted same to the Supreme Court with its "recommendation of dismissal" and no penalty attached, and the Supreme Court considered the same, in direct contravention of Rule VIII (d) Washington Supreme Court rules on discipline of attorneys, **(Appendix No. 3)**, providing as follows:

> "**Board Review:** If the formal complaint is dismissed or if there is no recommendation of discipline by the Board . . . the record of the proceedings shall be retained in the office of the Association, with notice sent to the Supreme Court, which notice shall remain confidential: . . . "

The minority opinion described the result as follows:

> "The prejudice engendered permeates the whole record . . .".

III.

The right that groundless charges remain confidential under Rule VIII (d) abrogated by transmittal and consideration by Supreme Court.

Rule VIII (d) confers the additional right that groundless charges against lawyers shall remain confidential, which has been abrogated. Upon dismissal, or no penalty, only a confidential notice to the Supreme

Court is prescribed and the record retained by the Association. The consideration by the court of the complete record of Count III is now contained in all legal court reports.

IV.

Petition to offer evidence of petitioner's witness on good faith improperly denied.

Board of Governors improperly denied petition of September 1, 1961 **(Appendix No. 8)** to hear the evidence of witness Donna Teal, who would testify as to the circumstances and his good faith existing in the transaction relative to Count I and Count II. The Supreme Court on an incomplete record in this regard stated:

> "However, his conduct in recording the deed and attempting to establish its validity destroyed any inference of his good faith in this regard."

V.

The incorporation by the Association into its Finding No. 15 of a prior oral decision, in a civil action which was influenced by anger was prejudicial hearsay.

The proceedings were improperly prejudiced by incorporating into paragraph 15 of the complaint, findings of fact, the Association's opening statement, the oral decision of the King County, Washington Superior Court, from a prior civil action which castigated this petitioner, when said trial judge testified herein that he was influenced by anger and a conflict of personalities at the time **(Appendix No. 5A)**, and his only judgment declared petitioner's contract, which is the basis of Counts I and II of the complaint herein, null and void and of no force nor effect, and nothing further except the recitation that petitioner had relinquished any interest. (Statement of Facts Vol. III page 537 (6-9). (Judgent Ex. 63, oral opinion Ex. 45.) **Appendix No. 10.**

VI.

Findings 21 and 22 and Conclusions I and II of Committee, and adopted by the Reviewing Board were not charged in the Complaint nor in issue.

The trial committee adopted Findings No. 21 and 22 and Conclusions I and II therefrom recommending permanent disbarment, adopted by the Board of Governors, and transmitted to the Supreme Court on matters not charged in the complaint, Counts I and II, and not in issue. The matters consisted of petitioner's defense alleging two separate embezzlements by his executrix, his efforts in rectifying same and the obvious fabrication of said executrix before the trial committee, justifying her actions. (petitioner's objections to Association's report p. 6-9). Further, the evidence showed the disbursement by petitioner of $517.25 in bonds, for the benefit of the beneficiary, and no question was charged or at issue concerning the propriety or correctness thereof. The committee's Findings and Conclusions however incorporated the foregoing into indictments of culpability, recommending disbarment thereon.

VII.

The Association and the Court adopted two mutually inconsistent and incompatible bases of disbarment.

Two mutually inconsistent and self-nugatory bases have been adopted by the Supreme Court, from the Association Record, Findings of Fact, Conclusions and Recommendations. (1) That petitioner had overreached, given no consideration, and his contract void. (2) That he defrauded the Welfare Department in obtaining State aid for one Della J. Harper when he was obligated by his foregoing contract to personally pay for her support. The record before the Court was not an impartial ascertainment of truth and fact.

VIII.

The Association and the Court eliminated the equitable and statutory right to payment and to claim payment for reasonable value of services, and as condition precedent to finding intent to defraud where disbarment was based on intent alone.

The Association's record and the Supreme Court decision completely eliminated petitioner's equitable right to payment for extensive services and his statutory right under Washington law, and **"RCW 2:44: 040", Appendix No. 2**, to compensation for legal services.

Evaluating the value of services rendered, particularly where there is an equitable and statutory right therefor, should constitute a condition precedent to the Court's finding of violation of Canons 10 and 11, **Appendix No. 4**, prohibiting an acquiring interest in the subject matter of litigation, or abusing client's confidence for personal gain. Extensive services were rendered from November 1, 1957 until July 22, 1959, for which petitioner was never paid nor the value ascertained. He converted no property and voluntarily relinquished his claim for payment. He made full accountings and substantially performed his contract in a good cause, and only he sustained loss.

In the prior civil action, he asserted his equitable and statutory right to payment against the sum of $1,837.17 net estate. His contract was voided without a ruling or determination on his compensation, admittedly owing.

The Supreme Court decision herein holds, that his assertion of that statutory right (supra) to a court hearing on substitution of attorneys, and ascertainment of, and payment of the reasonable charges, damaged the estate by virtue of the civil proceeding itself, thereby completely eliminating said equitable and statutory right and a hearing thereon contrary to due process.

IX.

Association's Trial Committee and Board of Governors were prejudiced, and impartiality did not exist.

The trial committee and Board of Governors were prejudiced and exhibited a lack of impartiality as indicated by all of the foregoing questions presented. Excessive cross-examination on the part of each member, noted in the minority opinion herein of the court, built up a voluminous statement of facts, having as its only objective the indictment of petitioner. The prejudicial Count III rested on the written statements of Ruth and LaMarr Meacham, and obtained by the complainants by subterfuge. At the hearing, LaMarr Meacham branded the statement false and untrue. Ruth Meacham was not produced and petitioner's request for her testimony, including his offer to pay the expense, denied. There was no other evidence, and petitioner was proved innocent. Nevertheless, nine pages of findings, conclusions and recommendations were made by the committee on said Count finding petitioner guilty, recommending disbarment and the same transmitted to the Supreme Court. The Board of Governors in refusing the petition to hear the testimony of Ruth Meacham, although recommending dismissal, exhibited prejudice in transmitting the record on this Count to the court contrary to Rule VIII (d) (supra).

X.

Permanent disbarment upon the facts herein is cruel and unusual punishment, and unreasonable, contrary to due process.

Permanent disbarment of petitioner under the facts herein, constitutes a cruel and unusual punishment. **Article VIII U. S. Constitution, Article 1, Section 14, Washington State Constitution.** The penalty is so extreme that it constitutes unreasonable and oppressive punishment, contrary to due process of law.

D. Constitutional Provisions, Statutes, Rules and Regulations Cited (Contained in Appendix Hereto)

Washington Statute, RCW 2.44.040

Rule 8 D (Rules for Discipline of Attorneys, January 2, 1961)

Canon of Professional Ethics No. 10, RCW 2.48. 230, Am. Bar Assn.

Canon of Professional Ethics No. 11, RCW 2.48. 230, Am. Bar Assn.

United States Constitution, Amendments, Article IV, Article VIII, Article XIV.

Washington State Constitution, Article 1, Section 14.

E. A Concise Statement of the Facts of the Case

Petitioner delivered one Fred W. Schmidt to the hospital on November 1, 1957, and guaranteed his expenses. Schmidt died November 7, 1957, and his last will and testament naming Josephine W. West his executrix was filed for probate by petitioner. His devisee was Della J. Harper, aged 95 years and bedridden. Neither had friends or relatives, and Schmidt by a written agreement (Ass'n Ex. 9, Vol. 2, St. of F., page 207) dated July 15, 1954 and a deed to the residence, had been her sole caretaker. **Appendix No. 9.**

The executrix had obtained possession of Schmidt's $600.00 bank account several days prior to his decease and on the opening of his deposit box obtained $1000.00 therefrom, and claimed both sums as her own. She testified the latter amount was in a brown envelope with her name on it but the inventory of the tax official upon opening the box and his testimony was that no such envelope was in the box, and there was only the sum of $1700.00 and $525.17 in bonds, besides papers in the box. Described in petitioner's "Objections to Report, p. 6-10"). Petitioner by court order obtained the $1000.00 back to the estate in January, 1958.

On November 20, 1957 Della Harper contracted with petitioner, similar as with Schmidt, executing a deed (Ass'n Ex. 14, Vol. 2, St. of F., 188) to her devised residence, reserving a life estate and reciting as consideration the assumption and performance by petitioner of the Schmidt contract. The transaction constituted a mortgage, based on future services, and possible cash advances, which then seemed imminent. There was concededly none other to assume her care, and she could not be removed from her home. Petitioner hired housekeepers, kept all accounts, obtained the services of a guardian, probated Schmidt's estate; and carried out the Schmidt contract until Mrs. Harper's decease, July 22, 1959. On March 5, 1958 the executrix obtained other counsel but no substitution of attorneys was had or payment made for services pursuant to Washington statute therefor **(RCW 2:44:040)** but petitioner's relationship was referred to the Washington State Bar Association, and no action taken. At this time, on March 17, 1958, petitioner recorded the deed reciting in the sales tax affidavit consideration of $2500.00 and testified herein that his services and possible cash advances were estimated then not to exceed said amount. Ass'n Ex. 57, Vol. 3, St. of F., 596, **Appendix No. 7.** The executrix, Josephine W. West, likewise became the executrix of Della J. Harper and in March, 1960, the King County, Washington trial court, Hon. Frank James, excoriated this petitioner in an oral decision in the executrix's civil action to cancel his contract. He testified herein his oral decision was influenced by anger and a conflict of personalities at the time. Petitioner asserted therein an equitable and statutory right to payment for service rendered. The judge stated there was overreaching and further a fraud on the welfare department in obtaining state assistance for Della J. Harper's support. The trial judge did not rule on petitioner's claim for payment, and there has never been a determination or evaluation thereof, and petitioner conveyed any interest in the estate to the executrix. On April 1, 1960 the court entered an order voiding the contract and adjudging it of no force nor effect and nothing further. The trial judge

assumed petitioner was attempting to obtain the Harper residence, overlooking the mortgage character of the transaction, and that there was but $1848.17 net estate.

Petitioner was never paid, converted no property, kept full accounts, and rendered no services after Della Harper's decease. He expended no funds of his own but incurred an obligation to housekeeper, Ann Lollar, of $2343.14, paid by the Harper estate. After claims, expenses and taxes, there was but $1848.17 in the Harper estate.

In March, 1961 the Bar Association filed its Complaint alleging in Count I, overreaching, taking advantage, and failure of consideration by petitioner, in his contract with Della Harper, and in Count II defrauding the Welfare Department in obtaining State assistance for her when in fact he was obligated by contract for her support, in assuming the Schmidt agreement.

Six weeks later, on May 2, 1961, the matter was brought to trial before a trial committee or Hearing Panel of the Association, consisting of two practicing attorneys and one member of the Association's Board of Governors.

The Association's Complaint also alleged in Count III that petitioner had cooperated pursuant to conspiracy with one Ruth Meacham and LaMarr Meacham, husband and wife, and their attorney, one George O'Dea, in preparing a false suit against Nathan and Thelma Baird, husband and wife, in August, 1959. Petitioner's only act had been to advise Ruth Meacham and Nathan Baird, prior to the aforesaid action, to discontinue an immoral mutual course of conduct. Petitioner had no part whatsoever in the Meachams' retaining their attorney or in connection with their lawsuit. Petitioner's brief acquaintanceship with Ruth Meacham stemmed from her introduction to him by Baird.

The Meachams' attorney, George O'Dea, died in September, 1959, and Mrs. Baird prepared separate

typewritten statements stating the civil action had been a wrongful conspiracy, participated in by petitioner, and representing herself to the Meachams as an agent of the Bar Association, obtained their signatures thereto in some manner unknown. Count III was based upon these statements. The only evidence was the witness LaMarr Meacham, who testified that the contents of the statements were false and untrue and that petitioner was in no way involved in a conspiracy with him and his wife and their former attorney. (Ass'n Ex. 31, Vol. II-St. of F. 259.)

The Association did not call Ruth Meacham and refused petitioner's requests for her testimony. Her whereabouts had been learned by petitioner just prior to the hearing, and her address confirmed during the same. Subsequently on September 1, 1961 a further petition was filed with the reviewing Board of Governors with an offer of proof, for her testimony, and in February, 1962, her statement taken in Bakersfield, California, was submitted exonerating petitioner, whereupon, the Board of Governors denied the petition in its report and in April, 1962, transmitted the record, findings, conclusions and recommendations of disbarment thereon, by the trial committee, to the Supreme Court, but recommended dismissal of said count.

Petitioner filed his objections to the report of the Board of Governors with the Washington Supreme Court in May, 1962. The report had adopted the trial committee's findings, conclusions, and recommendations of permanent disbarment on Counts I and II but recommended dismissal on Count III. Thereafter both sides filed briefs and on February 28, 1963 by a five to three decision the Washington Supreme Court permanently disbarred petitioner on Counts I and II, considered Count III and concurred in the dismissal thereof. Petition for Rehearing was filed in March, 1963, and denied July 11, 1963.

F. Manner of Presenting and Ruling on Constitutional Questions

The constitutional questions were called to the attention of the court in "Brief for the Respondent" (petitioner herein), pages 2, 4 and 5, 26-31, and particularly in "Respondent's (petitioner herein) Petition for Rehearing," pages 1, 2, 3, 8 and 9, and citation of Rule VIII (d) on the "Petition for Rehearing" (petitioner herein). Also, petitioner's "Exceptions to Findings, Conclusions and Recommendations of Trial Committee."

No ruling was made by the majority decision of the Supreme Court on the constitutional questions presented.

H. Argument for Allowance of Writ

In the recent United States Supreme Court case of **"Willner vs. Committee on Character and Fitness,"** (supra) it was said: "Lawyers and Courts should be particularly sensitive of and have a special obligation to respect the demands of due process."

The Washington Court decision in permanently revoking petitioner's license to practice law upon a flimsy pretext, condoning a procedure contrary to equal protection and due process, constitutes a precedent threatening the stability of the legal profession as an institution in the preservation and operation of American laws, traditions and economy. Further, the public will lose confidence in the ability of the profession to properly discharge its function and others will be deterred from entering into the field of legal practice.

The denial of due process and equal protection herein has resulted in a miscarriage of justice, which is best illustrated by the completely divergent analysis in the majority and minority opinions. The five judge majority described the act included in Counts I and II as follows:

"His conduct in this regard establishes moral turpitude, and dishonesty, in the course of his relations as an attorney, in violation of Rule for Discipline of Attorneys IA, 56 Wn. 2nd XLVI". **(See Appendix No. 6.)**

Further, the court majority held that petitioner had violated the Canon of Professional Ethics Nos. 10 and 11, and of his oath as an attorney. **(See Appendix No. 4.)**

The Court three judge minority described the same conduct as follows:

> " In this case Della Harper did receive a home and good medical care during her life as was agreed by the contract between her and the respondent. All the funds coming into the respondent's possession were accounted for. None of the funds were used by the respondent for any of the services that he rendered in the probate case or in the care of Miss Harper."

The effect of the consideration of the incomplete record of Count III, transmitted to the court contrary to Rule VIII (d) (supra) is described by the three judge dissenting opinion as follows:

> "The nature of Count III and the evidence concerning it, which is based on hearsay and statements later repudiated, does tend to prejudice anyone reading the record, and this is amply illustrated by the tenor of the cross-examination of witnesses and of the respondent. The prejudice engendered permeates the whole record, and I cannot help but feel that it influenced the consideration given to the other counts by the trial committee and Board of Governors, and also was considered by them in determining the penalty which they recommended should be imposed upon the respondent."

Petitioner rendered extensive legal services for a legal and worthwhile cause, received no payment and

converted no property. His contract was adjudged void by a competent court and he voluntarily declined compensation. Of all parties involved, only he sustained loss. The evaluation and monetary worth of his services should be a condition precedent by the Washington Supreme Court prior to their finding of permanent disbarment on the ground of violation of Canons 10 and 11 Professional Ethics, that by asserting his claim therefor the same constituted an attempted unjust enrichment.

I and II

Testimony in Count III of Ruth Meacham improperly denied because the charge was predicated on her written statement, and the transmittal of this portion of the record to the Supreme Court contravened Rule VIII (d) Washington Court Rule.

Concerning the denial and refusal of the Association to permit the testimony of witness Ruth Meacham, upon whose written statement said charges were based, it is apparent that the Association was determined to bring before the Supreme Court a prejudiced record. The statements were obtained by the complainants, Bairds, under highly questionable circumstances, and LaMarr Meacham testified the same were false; there was no other evidence and the charges should have been dropped then by the trial committee. Petitioner's only witness brought from California was ignored, (St. of F. Vol. 5) (Findings 33) although his testimony exonerated petitioner. In February, 1962 petitioner filed the written sworn statement of Ruth Meacham before a court reporter at Bakersfield, California, exonerating him, in line with his previous petition to take her testimony. Whereupon the Board of Governors did not dismiss the charges, would not hear her testimony, but transmitted the records and findings thereon of disbarment to the Supreme Court in violation of Rule VIII (d) (supra). The Association's effort to improperly prejudice petitioner was successful, as described in the dissenting opinion.

III

The right that groundless charges remain confidential under Rule VIII (d) abrogated by transmittal and consideration by Supreme Court.

Rule VIII (d) (supra) includes the right that groundless charges against attorneys remain confidential and not be used to prejudice him in disbarment proceedings of future existence. In **"Mapp vs. Ohio," 81 S. Ct. 1684, 367 U. S. 643,** the United States Supreme Court held that the benefits of the rule of privacy is embodied in the 4th and 14th Amendments and is enforceable against the State.

The transmittal of the record of Count III, to the Supreme Court, is a further denial of equal protection and due process under the rule of the Schware case (supra) prohibiting the State from excluding a person from practice of law in a manner or for reasons that contravene the due process or equal protection clause of the 14th Amendment. The right under the Washington Court Rule VIII (d) (supra) that the groundless charges of Count III be retained as confidential in the Association files is clear, and equal protection as defined in the Schware case (supra) is denied, by commingling the same with Counts I and II and forwarding the record, findings, conclusions and recommendations thereon of permanent disbarment to the Washington Court, to be considered in connection therewith, when obviously Count III standing alone would not come within the purview of the Court.

On principle, the procedure was similar to that prohibited by due process in **"Haynes vs. Washington," 373 U. S. (2) 503,** where a statement illegally obtained and considered in evidence contrary to the Washington statute, constituted a denial of due process.

The label, "recommending dismissal," should not remove the error from the scope and operation in the Willner case (supra), because the prejudice is the same.

IV

Petition to offer evidence of petitioner's witness on good faith improperly denied.

In addition to the refusal of the Association to permit the testimony of Ruth Meacham, a witness vital to prove or disprove her own written statement, the Board of Governors denied respondent's petition to take the testimony of one Donna Teal, a housekeeper hired by him, in the care of Della J. Harper, to prove the circumstances and his good faith in recording his contract. She was unavailable and her whereabouts unknown at the hearing. The petition (**Appendix No. 8**), offered ample reason for recording contract. The Board considered the case on review for seven months, August, 1961 to April, 1962, and no inconvenience or imposition would result from hearing this witness of petitioner in accordance with the offer of proof dated September 1, 1961. (**Appendix No. 8.**) The Supreme Court, on the record, found good faith lacking and the testimony of this witness was essential for a full, fair and complete hearing, on this element.

The Board in its report to the court, adopted the committee's findings on Counts I and II entirely, except only as to "amended Finding XIX," containing the statement that an accounting was not submitted by respondent; directly contrary to the full and complete reports and accounting made by petitioner and on file in the proceeding and particularly "**Association Exhibit No. 29, Vol. 2, p. 235 St. of F. Executor's Report and Account,**" filed September 26, 1958, signed and verified by petitioner before notary public, September 24, 1958. See (respondent's objections to report of Board of Governors, Par. 1).

V

The incorporation by the Association into its Finding No. 15 of a prior oral decision, in a civil action which was influenced by anger was prejudicial hearsay.

The incorporation into the complaint and Findings No. 15, and into the Association's opening statement, and introducing into evidence of the trial court's oral opinion in the prior civil action, influenced as he testified herein by anger and a clash of personalities, violates the rule of impartiality, particularly where no judgment was entered pursuant to his oral decision. The same constituted inflammatory hearsay, in a prior proceeding, and not based upon any fact, evidence or testimony in this proceeding and precipitated the beginning of a tidal wave of prejudice.

VI

Findings 21 and 22 and Conclusions I and II of Committee and adopted by the Reviewing Board were not charged in the complaint nor in issue.

The Findings 21 and 22 and Conclusions I and II of culpability, include the matters petitioner asserted in his own defense, and were not charged, nor in issue, and are contrary to the rule of notice in due process. Their consideration by the Supreme Court added further prejudice to that already engendered, and deprived petitioner of an impartial consideration by the Supreme Court, of his matters in defense. The recommendations based on this matter and these findings was permanent disbarment.

VII

The Association and the Court adopted two mutually inconsistent and incompatible bases of disbarment.

The adoption by the Association and the Court of mutually inconsistent bases of disbarment, (1) that petitioner's contract was void for fraud and (2) that petitioner defrauded the State because he did not fulfill his obligation of support therein, particularly where the assumed contract, **(Appendix No. 9)**, provided for maintenance and not personal financial support, is contrary to procedural due process. The contract was voided, petitioner received nothing, and Count I. is

based on an imputed intent or state of mind only. In Count II the agreement did not provide for payment of support and there was actually no basis or ground for disbarment in either.

VIII

The Association and the Court eliminated the equitable and statutory right to payment and to claim payment of reasonable value of services, and as condition precedent to finding intent to defraud where disbarment was based on intent alone.

Due process certainly includes the right to compensation and to claim compensation for services rendered, and the Washington Statute **"RCW 2:44:040," Appendix No. 2**, confers the statutory right to the ascertainment, evaluation and payment of attorney's fees by a court hearing. The Association and Supreme Court ignored petitioner's equitable and statutory rights and assumed, without first evaluating the extent and value of services that petitioner was endeavoring in the prior civil action to obtain unjust advantage, and further held the assertion of his rights in the prior civil action to be grounds for disbarment, contrary to due process. Petitioner's contract constituted a mortgage, based upon rendition of future services, and as such was an equitable lien, in Washington. **"Wallace vs. Town," 8 Wash. 244, 35 P 1080** and **"Boyer vs. Paine," 60 Wash. 56. 110 P 682.** The prior civil action disregarded petitioner's equitable and statutory claim, and declared the contract void without determination of fee, but this did not justify the Association and Court in doing so.

IX

Association's Trial Committee and Board of Governors were prejudiced, and impartiality did not exist.

A lack of impartiality and a definite prejudice in all things herein was displayed by the committee and Board of Governors. In all of the statement of facts, findings, recommendations, conclusions of the com-

mittee and the subsequent actions and reports of the Board of Governors there is not one indication of impartiality, or consideration for petitioner's rights of due process and equal protection. All of the proceedings were but a justification for a pre-determined intention by the Association to deprive this petitioner of his license and livelihood. Even prior to the court's action on rehearing petition, the Association on March 20, 1963, sent its Certificate of Disbarment to all courts, Bar Associations, and Internal Revenue Service. (See record.)

The penalty of permanent disbarment is unreasonable, and contrary to due process and constitutes cruel and unusual punishment.

The recent Washington case was cited of **"In re Simmons," 59 Wash. 2nd 689, 369 P. 2nd 947**, wherein a one year suspension from practice of law was administered and quoted therefrom was the following:

> "In making this determination, we consider the seriousness and circumstances of the offense and these standards: (1) Punishment of the offender, which should be sufficient to prevent reoccurence, . . . "

Petitioner continued an existing maintenance agreement, to conclusion, received no compensation for his extensive services, converted no property, and fully accounted. He conveyed any interest he had in the decedent's estate. This contract was voided in the prior civil action, and only he sustained loss. He did not defraud the Welfare Department for the beneficiary because the agreement did not require his personal support. The Washington Court for this conduct has permanently revoked his license, and deprived him of livelihood. This is a misapplication of the Court's foregoing announced standard, and is equivalent to the punishment by execution, for a traffic violation, which would prevent reoccurence, but would be unreasonable and contrary to due process of law.

The extreme nature of the punishment is illustrated

by comparing the same to the Washington case of **"In re Caughlan" Vol. 161. No. 11, Washington Decisions, page 555.** decided the day following this proceeding, wherein the attorney had been convicted and imprisoned for wilful failure to file income tax returns, and received but a thirty day suspension from law practice, deemed adequate punishment. The extreme punishment herein is further illustrated by comparison with the previous case of **"In re Stafford, 216 P 2nd 746, 36 Wash. 2nd 108"** wherein but three months suspension was held sufficient punishment for the acts of the lawyer in (1) soliciting an insurance beneficiary, (2) signing her name soon after to insurance check, (3) depositing the entire amount in his bank account, (4) claiming an attorney fee of $2000.00 upon false representation that 50% fee was approved.

The minority decision herein unequivocably states that the severe and extreme punishment stems from the consideration of the groundless charges in Count III, transmitted to the Court contrary to the rule of the Willner case (supra) and contrary to the Washington Court Rule VIII (d) (supra).

X

Permanent disbarment upon the facts herein is cruel and unusual punishment, and unreasonable contrary to due process.

Article I, Section 14, Washington Constitution and Article VIII, U. S. Constitution prohibits cruel and unusual punishment and the punishment administered in this proceeding is in violation thereof to the extent of shocking the public conscience because his acts violated nothing. The grounds of disbarment are non-existent. Count I rests on an imputed evil intent. Count II, welfare fraud, rests on a voided contract which did not require petitioner to pay support or preclude welfare. In the final analysis, petitioner performed difficult services gratis, the beneficiary received full benefit, and only he sustained loss.

CONCLUSION

The Association's procedure and record which is advisory to the court, but nevertheless adopted herein by the Washington Court, is contrary to the applicable decisions of the United States Supreme Court, heretofore cited. Refusal to hear the testimony of the witness Ruth Meacham relative to her written statement was error identical to that existing in the Willner case, and in principle to Haynes vs. Washington. The transmittal and consideration of Count III in contravention of Washington Rule VIII (d) is contrary to the Rule of Schware vs. Board of Bar Examiners, and the publication of said charge is likewise prohibited under the rule of Mapp vs. Ohio. A complete and impartial hearing was not had, and the record before the Washington Supreme Court was defective, measured by the foregoing standard of due process and equal protection of the law.

The result is a trial by hue and cry. The prejudicial momentum commenced, in the prior civil action, when the trial court in a moment of anger, rendered his oral decision. That court did not realize there was but $1837.17 net estate of Della J. Harper, that petitioner's assumed contract was a mortgage for future services and possible cash advances. That all services were rendered pursuant thereto, and on the date of execution, November 20, 1957, the beneficiary, Della J. Harper, was helpless and insolvent, and further the continuation of the Schmidt contract, was the only contract available to the beneficiary and this petitioner. He merely looked at the appraised value, $11,500.00 real estate, and on November 20, 1957, this amount petitioner had not paid, then held that petitioner attempted to obtain the remainder of the estate therein for nothing. Had he ascertained the true nature of the mortgage-contract and ascertained the extent and value of his extensive services and desired it to include personal expenditures for support, the welfare department could have been repaid and petitioner paid reasonably for his services. At any rate, the court entered no

judgment on his oral decision, and petitioner only sustained loss.

A year later the Association incorporated the oral opinion into its complaint, opening statement, evidence, and findings of fact and conclusions, magnifying the anger subsisting therein. The Association further increased the prejudice, by the written statement of Ruth Meacham, but would not permit her testimony to explain or refute the same. The prejudicial momentum gained greater weight and magnitude, when it was reported to the court by the Board of Governors, sufficient to influence the five judge majority to permanently disbar this petitioner. This is the exact form of proceeding which due process prohibits.

It is therefore respectfully submitted that this case is one calling for the exercise by the Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

Respectfully submitted,

NEAL CLARK
Petitioner.

APPENDIX

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

1. Washington Supreme Court Decision, "In the Matter of the Disciplinary Proceeding against NEAL Clark, an Attorney at Law." February 28, 1963:

No. C. D. 2472

En Banc

Filed February 28, 1963

In the Matter of the Disciplinary Proceeding Against NEAL CLARK, an Attorney at Law.

March 20, 1961, Neal Clark, an attorney practicing law in this state, was served with a disciplinary complaint by the Washington State Bar Association, charging him with three counts of conduct in violation of the Canons of Professional Ethics and his oath of attorney. His answer denied the charges and requested that they be dismissed. After trial upon the issues thus joined, the hearing panel entered findings of fact and conclusions sustaining all of the charges, and recommended disbarment. February 12, 1962, the Board of Governors, after it had reviewed the record, denied respondent's request, approved and adopted the panel's findings, conclusions, and recommendations as to counts 1 and 2, but disapproved the panel's findings relative to count 3 and recommended that it be dismissed.

Count I of the disciplinary complaint charge, **inter alia**, that Neal Clark had secured a deed to the residence property of Della J. Harper, aged 95, who was mentally and physically ill, upon his promise to furnish her care and support for the rest of her life; that he had not kept his promise to support, and that he reconveyed the property to the legal representatives of the

grantor only after a trial to set aside the deed was had upon the merits, and the court had orally announced its decision that the deed would be set aside.

The record discloses that Della J. Harper owned and occupied a home in Kent, Washington, valued at approximately $13,000. July 15, 1954, she executed and delivered to Fred W. Schmidt a deed conveying the residence property to him. The consideration for the deed was that Schmidt agreed, in writing, to support her for the rest of her life as follows:

> "NOW, THEREFORE, Second party (Fred W. Schmidt) covenants and agrees to and with the first party (Della J. Harper) that said first party may continue to live with the second party in said premises during the remainder of first party's life, and during all that time, the second party will furnish to the first party the same standard of comfort and care and the same or equally adequate accommodations for her personal use and comfort in the said premises as first party has heretofore had, and will provide the first party adequate food, supplies and other necessities to her well-being, health and comfort, and second party further covenants and agrees to furnish to first party, at second party's expense, normal medical care and medication, necessary for the first party during the remainder of her life, and second party further covenants and agrees that upon the death of the first party that second party will furnish for the first party a decent burial in accordance with the first party's state in life, and will pay funeral expenses and cemetery expenses therefor."

Fred Schmidt did support Della J. Harper until his death.

October 17, 1957, Schmidt executed a will, prepared by Neal Clark, in which all of his property was devised and bequeathed to Della J. Harper. November 1, 1957, Fred Schmidt became critically ill and was taken to the hospital by Neal Clark, who personally guaranteed

payment of his hospital expenses. Fred Schmidt died November 7, 1957. Neal Clark presented Fred Schmidt's will, in which Della J. Harper was the sole beneficiary, for probate. Josephine W. West was appointed executrix. The estate was inventoried and appraised in the sum of $12,325.

November 18, 1957, Neal Clark obtained a deed from Della J. Harper to her residence property, which she had reacquired as the sole beneficiary of the will of Fred Schmidt, deceased. The consideration expressed in the deed was "for and in consideration of agreement, assumption of, and the performance by grantee (Neal Clark) of the agreement dated July 15, 1954 between grantor (Della J. Harper) and Fred W. Schmidt, deceased."

The next day, Neal Clark prepared a petition for appointment of Ruth B. Morris as guardian for Della J. Harper, in which he alleged her to be an incompetent person and incapable of managing her affairs. Josephine West, the executrix of the Fred Schmidt estate, joined in the petition. At the hearing on the petition, December 2, 1957, the only witness who testified to Della J. Harper's incompetency was Neal Clark. She was adjudicated to be an incompetent person, and Ruth B. Morris was appointed her guardian.

January 15, 1958, the guardian filed an inventory of the assets of the ward's estate, in which the residence property was valued at $11,500. March 17, 1958, Neal Clark recorded his deed conveying to him the residence property of Della J. Harper.

July 22, 1959, Della J. Harper died. August 12, 1959, Josephine West, in her capacity as executrix of the estates of Fred Schmidt and Della J. Harper, commenced an action to set aside the Harper deed, alleging that Neal Clark had fraudulently overreached his client, Della J. Harper. Neal Clark answered the complaint, denied the allegations of fraud and overreaching, and alleged that he had performed the Fred Schmidt agreement by arranging for Della J. Harper's care and support during her lifetime. He further affirmatively alleged that he had not been paid for his services as attorney for the estate of Fred Schmidt and

for the guardianship estate of Della J. Harper, and that "the conveyance from the said Della J. Harper was given in payment for all services or costs and expenses to be incurred by defendants, in performance of the Schmidt agreement." The answer prayed, **inter alia**, that the complaint be dismissed, and that defendant Clark be paid for professional services rendered.

Upon the issues thus joined, the cause was heard by the court, and, at the close of the evidence, the court orally announced that findings of fact, conclusions of law, and judgment could be prepared setting aside the deed. Thereafter, Neal Clark requested leave of the court to reconvey the premises to the executrix, and that the court enter an order of dismissal. The request was granted, the property reconveyed, **and the cause dismissed.**

The second count of the complaint charged that Neal Clark had obtained support for Della J. Harper through the Department of Public Assistance for King County by knowingly concealing from the department the existence of the deed to himself and his promise to support Della J. Harper.

The record discloses that, on November 4, 1957, during the time Fred Schmidt was a patient in the hospital, Neal Clark, signing as "agent for Della J. Harper," made an application in her behalf for public assistance, alleging that Della J. Harper was over 95 years of age, and "incapable of self care and indigent." The accompanying statement of her resources indicated that she had no property. Mr. Clark was informed that financial assistance could not be granted until a guardian was appointed for Della J. Harper. As above indicated, a petition for guardianship was filed November 19, 1957, and, on December 2, 1957, Ruth B. Morris was appointed guardian for Della J. Harper. Thereafter, on December 4, 1957, the original application for assistance, unaltered except for the addition of Ruth B. Morris' signature as guardian, was renewed.

In the meantime, on November 18, 1957, Neal Clark had obtained the deed from Della J. Harper. The December 4, 1957, application for public assistance did not disclose, in the statement of Della J. Harp-

er's resources, that she had a life estate in the residence property in which she resided; that Neal Clark had agreed to support her for the remainder of her life, and that she was the sole beneficiary of the assets of the Fred Schmidt estate.

The department, based upon the information contained in the application, commenced making public assistance payments for the care and support of Della J. Harper on January 1, 1958, and continued the payments until her death on July 22, 1959, expending a total of approximately $3,000.

Count 3 of the complaint charged Neal Clark with entering into a conspiracy to extort funds from a former client by falsely accusing him of having improper relations with a married woman other than his wife. The hearing panel, relying only upon the testimony of the client and his wife, found as a fact that the charge had been sustained. The Board of Governors, in its review of the record, determined that the charge had not been sustained, and recommended that it be dismissed.

The disclosure, in this opinion, of the sordid details of the accusations and counteraccusations, would serve no useful purpose. Our review of the record discloses that all of the witnesses, other than the client and his wife, repudiated their previous statements relative to Neal Clark's participation in the alleged extortion. The testimony of the client and his wife established that neither of them had any personal knowledge of the alleged conspiracy, other than the fact of the service of a summons and complaint upon them. Their testimony relative to Neal Clark's participation in the conspiracy was based upon hearsay and upon statements which had been repudiated by those who made them. In our opinion, the evidence which the hearing panel relied upon was not sufficient to establish the elements of a conspiracy to extort.

With reference to count 3, we accept the recommendation of the Board of Governors that the charge be dismissed.

With reference to counts 1 and 2, the conclusions and recommendations of the hearing panel, as approved by the Board of Governors, were as follows:

"(1) That respondent (Neal Clark) gave no consideration for the deed he obtained from Della J. Harper dated November 18, 1957; that he failed to keep his promise and to support and provide for her in accordance with the recited consideration of such deed, that in obtaining said deed he overreached and took advantage of Miss Harper, a ninety-five year old woman who was then hard of hearing, practically blind and mentally incompetent; . . . His acts in these regards involved moral turpitude and bordered upon dishonesty and corruption, as referred to in Rule 10 (6), Discipline of Attorneys, 34A Washington, page 183; Rule 1A, Rules for Discipline of Attorneys, Wash. Dec., Volume 157, No. 2A, page 32, and were in violation of his oath as an attorney. Rule 6 of Admission to Practice, 34A, Wash., page 164.

"That in this connection, he also violated Canons 10 and 11 of the Code of Professional Ethics, as found in 34A, Wash., 129.

". . .

"(3) That in preparing and presenting the application for assistance for Miss Harper, respondent wilfully perpetrated a fraud upon the King County Welfare Department, resulting in the Department paying a minimum of $3,000.00 in support of Miss Harper, and respondent's acts in this connection involved moral turpitude within the meaning of the provisions of Rule 10 (6), Discipline of Attorneys, 34A Wash. 183, and Rule 1A, Rules for Discipline of Attorneys, Wash. Dec., Volume 157, No. 2A, page 32.

". . .

"(5) The evidence submitted to the Hearing Panel proves conclusively that respondent was guilty of a course of conduct demonstrating unfit-

ness to practice of law and gross incompetency in the practice of law. Rule IM, Wash. Dec., Volume 157, No. 2A, page 33; Rule 10 (10), 34A Wash., page 184.

"RECOMMENDATIONS

"(1) Based upon its findings as to Item One of the complaint, the Hearing Panel recommends that Neal Clark, this respondent, be permanently disbarred as an attorney of the State of Washington;

"(2) Based upon its findings as to Item Two of the complaint, the Hearing Panel recommends that Neal Clark, this respondent, be permanently disbarred as an attorney of the State of Washington."

We adopt the findings and conclusions of the hearing panel, as approved by the Board of Governors, relative to counts 1 and 2. Do these findings and conclusions warrant the penalty recommendations of the hearing panel and the Board of Governors that Neal Clark be disbarred?

In **re Simmons**, 159 Wash. Dec. 705, 721, 369 P. (2d) 947 (1962), we said:

". . . In making this determination, we consider the seriousness and circumstances of the offense and these standards: (1) Punishment of the offender, which should be sufficient to prevent reoccurence, (2) a penalty sufficient to deter other practitioners from engaging in such conduct, and (3) punishment sufficient to restore and maintain respect for the honor and dignity of the profession, and to assure those who seek the services of attorneys at law that the penalties for unprofessional conduct will be strictly enforced. (Citing cases.)"

Applying these standards to the instant cause, we are concerned with the circumstances surrounding the offenses.

The mitigating circumstances urged by Neal Clark are, first, that he voluntarily guaranteed payment of the hospital expenses of Fred Schmidt. The guarantee, however, had no relationship to his fiduciary duties

and responsibilities to his client, Della J. Harper. Further, the guarantee involved no financial risk to him because he was aware of the financial responsibility of Fred Schmidt.

Second, he performed legal services in both the estate of Fred Schmidt and guardianship estate of Della J. Harper, for which he was not paid. His refusal to reconvey the residence property until compelled to do so by the court entailed an estate expense, as a result of his misconduct, in excess of his claim for legal services.

Third, Neal Clark asserts that the cash assets of both estates were fully accounted for and the estates suffered no financial loss. This contention does not take into account the legal expense involved in forcing the reconveyance of the residence property.

Fourth, he asserts that he did inventory the residence property as a part of Della J. Harper's guardianship estate assets. Had he thereafter apprised the Department of Public Assistance of the undisclosed asset and destroyed the deed, such acts would have established an intent to place Della J. Harper and the Department in a status quo. However, his conduct in recording the deed and attempting to establish its validity destroyed any inference of his good faith in this regard.

Having in mind these alleged mitigating circumstances, we now consider them as applied to counts 1 and 2.

With reference to count 1, while acting in his fiduciary capacity as attorney for his client, who was 95 years of age and incompetent to transact business, Neal Clark, being aware of these facts, took from her a deed to her residence property, in consideration of his promised to provide for her as Fred Schmidt had previously done, and to furnish burial in conformity with her station in life. From the inception of this agreement, he successfully made her dependent upon public assistance, in total disregard of his contract to provide for her from his personal funds. None of his resources was expended for the care, support or burial of Della

J. Harper. His conduct in this regard establisnes "moral turpitude, (and) dishonesty . . . in the course of his relations as an attorney," in violation of Rule for Discipline of Attorneys 1A, 57 Wn. (2d) xlvi.

With reference to count 2, Neal Clark knowingly falsified the applications for public assistance, when he stated that Della J. Harper was an indigent person. When the November 4th application was made, Fred Schmidt, although in a hospital, was still obligated to support her, and, when the December 4th application was made, Clark had obligated himself to continue Schmidt's previous agreement. The fact that he later inventoried the residence property in the guardianship estate did not correct the false statements in the applications for public assistance. As a matter of fact, he recorded the deed and wrongfully contended that the consideration had been paid in full. His conduct in this regard was violation of Canon of Professional Ethics 11. RCW Vol. O, and of his oath as an attorney.

These are the circumstances to which the standards for punishment must be applied. The punishment must be sufficient to prevent reoccurence, to deter other practitioners from engaging in like conduct, and to restore and maintain respect for the honor and dignity of the legal profession in the State of Washington. **In re Simmons, supra.** To accomplish these purposes, both the hearing panel and the Board of Governors recommend disbarment. We agree that the conduct detailed above warrants disbarment, and, therefore, adopt the recommendations of the hearing panel and the Board of Governors.

It is ordered that Neal Clark be, and he hereby is, disbarred from the practice of law in the State of Washington, and that his name be stricken from the roll of attorneys.

OTT, C. J.

We concur:
HILL, J.
DONWORTH, J.
FINLEY, J.
WEAVER, J.

No. C. D. 2472

Rosellini, J. (dissenting)—The nature of count 3 and the evidence concerning it, which is based on hearsay and statements later repudiated, does tend to prejudice anyone reading the record, and this is amply illustrated by the tenor of the cross-examination of witnesses and of the respondent. The prejudice engendered permeates the whole record, and I cannot help but feel that it influenced the consideration given to the other counts by the trial committee and the Board of Governors, and also was considered by them in determining the penalty which they recommended should be imposed upon the respondent.

There is a truism in the trial of any cause that "once a bell is rung, it cannot be unrung." or as Omar Khayam states it in The Rubaiyat:

"The Moving Finger writes; and, having writ,
Moves on: nor all thy Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all thy Tears wash out a word of it."

This court should therefore be very careful to disregard this count and the evidence introduced under it, and endeavor to treat the respondent the same as others guilty of similar misconduct have been treated.

In this case Della Harper did receive a home and good medical care during her life as was agreed by the contract between her and the respondent. All the funds coming into the respondent's possession were accounted for. None of the funds were used by the respondent for any of the services that he rendered in the probate case or in the care of Mrs. Harper.

Since the respondent did claim property of his client to which he was not entitled, just as did the respondent attorney in **In re Simmons**, 59 Wn. (2d) 689, 369 P. (2d) 947, the penalty imposed therein should be likewise imposed in this instance.

I would suspend the respondent for a period of one year.

ROSELLINI, J.

We concur with Judge Rosellini,

HUNTER, J.
HAMILTON, J.

2. Washington Statute, RCW 2.44.040 Change of Attorneys: The attorney in an action of special proceeding, may be changed at any time before judgment or final determination as follows:

(1) Upon his own consent, filed with the clerk or entered upon the minutes; or

(2) Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change be made.

3. Rule 8 D (Rules for Discipline of Attorneys, January 2, 1961):

PROCEEDING AFTER HEARING. D. BOARD REVIEW. Each proceeding in which a hearing has occurred shall be reviewed by the Board upon the record made and filed in the office of the Association, together with the statements in support of or in opposition to such findings, conclusions and recommendation as provided by Rule VII, B and C. Neither State Bar Counsel nor the respondent attorney shall be entitled to be heard orally in such reviews unless otherwise ordered by the Board. . . .

If the formal complaint is dismissed or if there is no recommendation of discipline by the Board or if the recommendation is that the respondent attorney be censured or reprimanded and the censure or reprimand is accepted by the respondent attorney, the record of the proceedings shall be retained in the office of the Association with notice thereof sent to the Supreme Court, which notice shall remain confidential. . . . .

4. Canon of Professional Ethics No. 10. Acquiring interest in litigation. A lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

Canon of Professional Ethics No. 11. Dealing with trust property.

The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be comingled with his own or be used by him.

5. Petitioner's requests to trial committee to hear evidence of witness Ruth Meacham relative to her written statement.

St. of F. Vol. 2, page 245. Mr. Clark: . . . "And I think that is the basis of the basis of the thing, is whether or not I got ahold of an attorney and tried to stir up something, or whether she consulted this attorney on her own initiative.

"I sent her two telegrams, I went to quite a little bit of work trying to locate her in Yakima, and I finally found an address, 319 Truckston, in Bakersfield, California. I sent two telegrams to which I received no reply. If she were here she would tell you the same thing. I wish she were here: I would offer to pay her plane fare back if we could locate her. She would tell you exactly the same thing. She has admitted that she has been duped by Baird, and he has tried to dupe me, and I think by drawing up this affidavit under these circumstances, they are also trying to dupe the Bar Association, also."

Mr. McMullen: "That is the end of your opening statement?"

Mr. Clark: "Yes sir."

Mr. Horswill: "May I ask one question: is she missing, as far as you know, Tim?"

Mr. Royce: "Yes. I have never been able to locate her."

St. of F. Vol. 4, page 697. Mr. McMullen: "Gentlemen, I don't think this is getting us anyplace. Time is very short. Mr. Eberharter has to leave to take care of some matters in Court.

" Is there any further question to be submitted to Mr. Clark?"

THE WITNESS (Mr. Clark): "I think here is a very important consideration on the third item of this complaint. I don't know what your attitude might be, but I think that could only properly be considered if we secured this . . . or at least made some attempts to secure this young women who is the basis of the entire thing. I have made some attempts, considerable attempts. But I don't think the matter should be . . . I think it should be continued to at least give an opportunity to get her up here from California where I just recently learned she is."

(No ruling or response by the committee was made or given to either of the foregoing requests.)

5A: St. of Facts, Vol. 3, page 537 (6-9) Judge James (WITNESS)

Answer: "You were angry. I knew that you were angry and there was a clash of personalities there, because it made me angry, too. I think that the opinion reflects that . . . my response to you, at the time.

6. Rule I, A. The commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his relations as an attorney, or otherwise, and whether

the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon such conviction, however, the judgment and sentence shall be conclusive evidence, at any ensuing disciplinary hearing, of the guilt of the respondent attorney of the crime described in the indictment or information, the statute upon which it is based, and the judgment and sentence. A disciplinary hearing as provided in Rule VII of these rules shall be had to determine only whether moral turpitude was in fact an element of the crime committed by the respondent attorney.

7. Vol. 4 page 687, Statement of Facts, line 24:

QUESTIONS BY MR. HORSWILL: (to Neal Clark, petitioner):

Q. "You testified here recently, I believe, that the reason you put the $2500 valuation on the real estate affidavit was that you figured your services would never run over $2500. Is that right?"

A. "I said services and potential liability. I had personally guaranteed Mrs. Lawler wages at the time of her hiring, and I was very apprehensive about the fact of a substantial claim against me, personally. Fortunately, the claim turned out to be some $2200 which was asserted against the estate of Della Harper, and paid. I was relieved of my personal responsibility by that payment, but at the time I was under personal liability to her."

Q. "Didn't you testify at the time of the trial, on page 49 of the transcript, that 'her title to the property was vested in Della Harper and a reversionary interest was vested in me, that is true, but I didn't think at the time that the reversionary interest amounted to very much because of $5,000 or $6,000 worth of obligations here. I speculated that the reversionary interest would not be worth $2500'?"

A. "Not worth over $2500."

8. THE STATE OF WASHINGTON

BEFORE THE BOARD OF GOVERNORS OF THE WASHINGTON STATE BAR ASSOCIATION

PETITION TO OFFER FURTHER EVIDENCE AND FOR HEARING BEFORE THE BOARD OF GOVERNORS

In re NEAL CLARK, an Attorney at Law

Respondent hereby requests permission to offer further evidence and to appear before the Board of Governors with same. The evidence proposed and reasons for not offering same before the Panel are as follows:

(1) Concerning Item 1 of the complaint, the testimony of Donna Teal, who was a housekeeper for Mrs. Della J. Harper, hired by respondent who will testify respecting the actions of Josephine W. West closeting herself with Mrs. Harper and attempting to obtain the execution of legal documents. This witness's whereabouts at the time of the Panel Hearing was unknown.

(2) Concerning Item III of the complaint, respondent will produce the only real witness in the matter, outside of respondent himself and Clifford Lee, (both of whom testified), Mrs. Ruth Meacham, and she will testify that she consulted her attorney, George O'Dea, of her own initiative without any suggestion or conspiracy by respondent with her, O'Dea, or both. Her whereabouts were not learned until just prior to the panel hearing and during the hearing, and the association has never made any effort to obtain her testimony.

(3) Concerning Item III of the complaint, the panel in its findings XXII makes reference to "lipstick" on respondent's shirt. It could not have occurred to respondent that such a matter would be of importance, or recognized, particularly when the witness making the statement, repudiated her statement before the

panel. The affidavit of respondent's wife or her testimony will show that the lipstick on the shirt, if any, got there from attending a Bar Association convention in Yakima, Washington, at the Yakima Country Club members' dance, and not as the panel attempts to find, from association with one Ruth Meacham.

NEAL CLARK,
Respondent

PHIL LANDE,
Attorney for Respondent

State of Washington.
County of King—ss.

NEAL CLARK, being first duly sworn, on oath deposes and says: The foregoing proposed evidence was unavailable at the time of hearing for the reasons hereinabove stated. That such evidence is necessary to respondent's defense, and the same is relevant and appropriate, and the witness will testify substantially in the manner outlined. That the request herein is not for delay, but essential for a complete hearing of the association complaint.

NEAL CLARK.

Subscribed and sworn to before me this 1st day of September, 1961

PHIL M. LANDE

Notary Public in and for the State of Washington, residing at Burien.

9. **AGREEMENT**

THIS AGREEMENT, made and entered into this 15th day of July, 1954, by and between DELLA J. HARPER, party of the first part, and FRED W. SCHMIDT, party of the second part,

WITNESSETH:

That WHEREAS, second party has been for the last eleven years rendering invaluable services unto the first party herein, in caring for and maintaining first party's home, paying expenses thereof, providing care and maintenance for the first party, giving her care and attention and making her comfortable, and

WHEREAS, the first party has arrived at an advanced age in life and now desires to secure her care and maintenance for the remainder of her life, and a fitting and appropriate funeral and burial upon her death, and

WHEREAS, the second party is willing to continue to render services, caring for and maintaining the first party's home, and providing care and maintenance for first party, and giving her care and attention, to the end that the remainder of her life shall be comfortable, and

WHEREAS, first party, for and in consideration of the covenants of the second party hereinafter set forth, has this day deeded to the second party the following described premises, situated in the County of King, State of Washington, to-wit:

The west one-half of Tract 36, Waterman's Acre Tracts to the Town of Kent,

NOW, THEREFORE, second party will furnish to the first party the same standard of comfort and care and the same or equally adequate accommodations for her personal use and comfort in the said premises as first party has heretofore had, and will provide the first party adequate food, supplies and other necessities to her well-being, health and comfort, and second party

further covenants and agrees to furnish to first party, at second party's expense, normal medical care and medication, necessary for the first party during the remainder of her life, and second party further covenants and agrees that upon the death of the first party that second party will furnish for the first party a decent burial in accordance with the first party's state in life, and will pay funeral expenses and cemetery expenses therefor.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this 15th day of July, 1954.

FRED W. SCHMIDT (SEAL)
DELLA J. HARPER (SEAL)

(ACKNOWLEDGMENT)

NOTARY SEAL.

10.

In the Superior Court of the State of Washington
in and for the County of King.

No. 539 748

JUDGMENT

Josephine W. West, executrix of the estate of Fred W. Schmidt, Deceased, and Josephine W. West, executrix of the estate of Della Josephine Harper, Deceased,

Plaintiff,

v.

Neal Clark and Jane Doe Clark, his wife,

Defendants.

This matter having come on for trial before the undersigned Judge of the above Court on the 28th day of March, 1960, the plaintiff appearing in person as executrix of the estate of Fred W. Schmidt, deceased, and as executrix of the estate of Della Josephine Harper, deceased, and being represented by her attorney James F. Curran of Curran & Ratcliffe, Kent, Washington, and the defendant, Neal Clark appearing personally and the defendant, Jane Doe Clark, whose true name is Rosemary Anne Clark, not appearing, but both defendants being represented by their attorney, Jeffrey Heiman, and the witnesses having been sworn and the Court having heard oral testimony and having received evidence documentary, and both parties having presented their arguments through their respective attorneys and plaintiff and defendant having agreed that no Findings of Fact or Conclusions of Law need be entered herein and it further appearing that defendants have heretofore executed, delivered and recorded a deed reconveying the title to the real property described in the Complaint to the plaintiff.

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED

I

That that certain warranty deed, dated November 18, 1957; wherein Della J. Harper was grantor and Neal Clark was grantee, found in the records of the King County Auditor in Volume 3769 of Deeds at page 400 be and the same is hereby set aside and cancelled and declared to be null and void and of no legal force or effect whatsoever.

II

That the injunction bond heretofore filed herein by plaintiff be and the same is hereby exonerated.

III

That the plaintiff shall have and recover from the defendants Neal Clark and Jane Doe Clark, his wife, whose true Christian name is Rosemary Ann Clark, for all costs and disbursements incurred in the prosecution of this action in the amount of $172.45.

DONE IN OPEN COURT this 22nd day of April, 1960.

FRANK D. JAMES
Judge

11.

September 21, 1959

I, Ruth Meacham will willfully withdraw from my suit of Meacham vs. Baird on grounds I have since then found I am not pregnant, as I charged and never was. Mr. Nathan Baird being the cause of.

Myself, Ruth Meacham, and my lawyer George O'Dea and Mr. Baird's lawyer, Neal Clark planned the summons for Mr. Nathan Baird for the purpose of scaring money out of him. As Mr. Clark knew Mr. Baird had money. We never intended this suit to go to court. The summons was given to Mr. Baird but he would not pay any money.

I am physically well and happy back living in Yakima, Washington, as before.

I am withdrawing my name from this suit. I swear this to be true.

(Signed) RUTH MEACHAM

State of Washington,
County of Yakima—ss.

On this 28th day of September, A.D. 1959, before me, the undersigned, a Notary Public in and for the State of Washington duly commissioned and sworn, personally appeared Ruth Meacham to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she signed and sealed the said instrument as her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

ELRY GRANSTAND (Signed)
Notary Public in and for the State of Washington, residing at Yakima

Office Supreme Court, U.S.
FILED
FEB 6 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 647

NEAL CLARK,

Petitioner,

vs.

WASHINGTON STATE BAR ASSOCIATION,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

HENRY WALDMAN,
Attorney for Petitioner,
5 Beekman Street,
New York 38, N. Y.

HENRY WALDMAN,
of Counsel.

IN THE

Supreme Court of the United States

October Term, 1963

No. 647

NEAL CLARK,

Petitioner,

vs.

WASHINGTON STATE BAR ASSOCIATION,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

1. The Supreme Court of the State of Washington, the court of last resort of said state, made and entered its order, which disbarred permanently the petitioner above named, Neal Clark, as a member of the Bar of the State of Washington.

2. Three of the eight justices, who participated in the proceeding, dissented, in the following opinion:

> "Rosellini, J. (dissenting)—The nature of count 3 and the evidence concerning it, which is based on hearsay and statements later repudiated, does tend to prejudice anyone reading the record, and this is amply illustrated by the tenor of the cross-examination of witnesses and of the respondent. The prejudice engendered permeates the whole record, and I cannot help but feel that it influenced the consideration given to the other counts by the trial committee and the Board of Governors, and also was considered by them in determining the penalty which they recommended should be imposed upon the respondent.

There is a truism in the trial of any cause that once a bell is rung, it cannot be unrung,' or as Omar Khayyam states it in The Rubaiyat:

> 'The Moving Finger writes; and, having writ,
> Moves on: nor all thy Piety nor Wit
> Shall lure it back to cancel half a Line,
> Nor all thy Tears wash out a word of it.'

This court should therefore be very careful to disregard this count and the evidence introduced under it, and endeavor to treat the respondent the same as others guilty of similar misconduct have been treated.

In this case Della Harper did receive a home and good medical care during her life as was agreed by the contract between her and the respondent. All the funds coming into the respondent's possession were accounted for. None of the funds were used by the respondent for any of the services that he rendered in the probate case or in the care of Mrs. Harper.

Since the respondent did claim property of his client to which he was not entitled, just as did the respondent attorney in *In re Simmons*, 59 Wn. (2d) 689, 369 P. (2d) 947, the penalty imposed therein should be likewise imposed in this instance.

I would suspend the respondent for a period of one year.

ROSELLINI, J.

We concur with Judge Rosellini

HUNTER, J.
HAMILTON, J."

The old saying that he who would be his own lawyer has a fool for a client is aptly illustrated in this proceeding.

Clark authored his petition and filed it before I had entered my appearance as his attorney and counsel.

The petition reflected the shock of one, who, from a position of standing in his community as a lawyer, is declared by the highest state court, no longer fit to practice law.

It was the cry of passionate despair and feeling of outrage. It omitted to state, except casually that three of the eight justices, dissented.

I realized that the petition was confusing, and would not impress the Court. It was my intention to straighten out the facts in a brief in reply to the respondent's answering brief. Respondent also realized that the petition would not appeal to the Court, and it waived its right to answer the petition, so that the only papers before the Court, was the petition, and its decision, denying certiorari. I must admit, was justified.

Respondent's strategy was cunning; some would perhaps term it clever and brilliant. It seriously affected the life of a man and the happiness of his family, for which reason, I cannot join in the cheers.

Mr. Clark was born in State of Washington, and has lived there all his life. He was admitted to the Bar on February 17, 1939, and had practiced law, actively and continuously (with the exception of time spent in military service).

No complaint of any unprofessional or unethical conduct had ever been made against him, so that the disbarment justifies his claim of the infliction of cruel and unusual punishment, contrary to his constitutional right against such treatment. Punishment is not limited to physical punishment.

He is married, and lives with his wife and two sons in Hadlock, a few miles from Seattle. He maintains his office in Hadlock.

The Bar of Washington is organized. It is ruled by a board of governors. When a complaint of unethical conduct is made against a lawyer and entertained by the Governing Board, it appoints a trial committee of three lawyers as the trial judges, one, a member of the board of governors.

The trial committee is presumed to be composed of impartial judges but the record fails to indicate fairness or impartiality.

On the contrary, they went after Clark with such extreme venom, that they created a miasma around them, which prevented them from distinguishing between right and wrong. To indulge in a colloquialism they were out "to get him" and they "got him".

The effect on the life of a lawyer who is disbarred is difficult to describe in mere words. He must begin anew. To a man of Clark's age—what occupation can he engage in without the handicap of distrust from almost everyone.

"He who takes from me the means whereby I live, he takes my life."

From the "Merchant of Venice" by Shakespeare, Act 4, Scene 1.

Under the Court Rules this application is labeled a "Petition". I somehow feel that it is, after all a motion in a proceeding. Should the Court grant it, we will come into Court, and show that Clark's constitutional rights had been violated, denial of due process—that in fact, he is the victim of judicial lynching.

We claim that his rights under the Fifth, Eighth, and Fourteenth Amendments of the Constitution of the United States have been violated.

Wherefore, we pray the Court that the Petition for Rehearing be granted and for such other and further relief as the Court may deem just and equitable.

Dated, New York, New York, February 5, 1964.

Respectfully submitted,

HENRY WALDMAN,
Attorney for Petitioner.
5 Beekman Street,
New York 38, N. Y.

HENRY WALDMAN,
of Counsel.

Certificate of Counsel

I, HENRY WALDMAN, counsel for Dean Clark, hereby certify that the foregoing petition is presented in good faith and not for delay. I further certify that the petition is restricted to the grounds above specified.

Dated, New York, New York, February 5, 1964.

HENRY WALDMAN,
Counsel for Petitioner, Neal Clark.